

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

AMY BRYANT, MD,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:23-cv-77
)	
JOSHUA H. STEIN, <i>et al.</i> ,)	
)	
Defendants,)	
)	
and)	
)	
PHILIP E. BERGER, <i>et al.</i> ,)	
)	
Defendants.)	

RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT

Defendants, Philip E. Berger and Timothy K. Moore, ("Legislative Leader Defendants"), by and through the undersigned counsel, file this Response to Plaintiff's Motion for Leave to Amend the Complaint and state as follows:

1. The Legislative Leader Defendants do not oppose Plaintiff's Motion for Leave to File an Amended Complaint to include the proposed Amended Complaint attached to Plaintiff's Motion as Exhibit A.

2. The Legislative Leader Defendants acknowledge that the statutes at issue in this action were amended by Session Law 2023-14 and will become effective on July 1, 2023.

3. The Legislative Leader Defendants reject any of Plaintiff's characterization of the newly enacted laws in her Motion, and instead suggest that those laws speak for themselves.

4. Legislative Leader Defendants believe that the Amended Complaint does not change the preemption theory they briefed and argued in their Motion to Dismiss the original Complaint. Thus, while Plaintiff's Amended Complaint updates the actual laws in question after the General Assembly enacted new laws since Plaintiff initiated her lawsuit, these changes do not warrant supplemental briefing from the original Motion to Dismiss. The substantive legal arguments concerning preemption briefed by Defendants and Plaintiff are unchanged by the slightly different facts presented by the changes in Session Law 2023-14.

5. Legislative Leader Defendants discussed with Plaintiff this position of no further briefing, and both sides standing on the current Motion to Dismiss briefing submitted

to the court thus far. Plaintiff informed Legislative Leader Defendants that she agreed. Thus, the parties jointly ask the Court to allow the proposed Amended Complaint to be entered by Plaintiff and then that the Court refer to the currently pending briefing on the Motion to Dismiss because the amended Complaint does not raise any new legal theories or factual allegations that affect the previously briefed legal analysis.

6. If the Court permits this posture of granting leave to Plaintiff to file her Amended Complaint and not requiring additional briefing and considering the existing Motion to Dismiss based on the same legal issues that all parties have briefed, then Plaintiff's request to expedite briefing on any new motion to dismiss the Amended Complaint is moot. If the Court does not allow the existing briefing on the Motion to Dismiss to apply to the Amended Complaint, then Legislative Leader Defendants object to an expedited briefing schedule.

WHEREFORE, Legislative Leader Defendants consent to this Court granting Plaintiff's Motion for Leave to Amend the Complaint, and ask the Court to not require additional briefing and, instead, considering the existing Motion to

Dismiss based on the same legal issues that all parties have briefed. If the Court does not allow the existing briefing on the Motion to Dismiss to apply to the Amended Complaint, then Legislative Leader Defendants object to an expedited briefing schedule.

RESPECTFULLY SUBMITTED THIS 20th day of June, 2023.

s/ W. Ellis Boyle
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* This email address must be used in order to effectuate service under Rule 5 of the North Carolina Rules of Civil Procedure.

** Email address to be used for all communications other than service.

*** Special appearance granted.

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2023, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

s/ W. Ellis Boyle
W. Elis Boyle

*Attorney for Defendants
Berger and Moore*